

In the Court of Appeals of the State of Alaska

Abraham E Henry,
Appellant,

v.

State of Alaska,
Appellee.

Trial Court Case No. **4FA-12-01224CI**

Court of Appeals No. **A-13145**

Order

Motion to Extend Time to File
Appellant's Opening Brief

Date of Order: **3/11/20**

Before: Wollenberg and Harbison, Judges.

Abraham Henry is represented in this appeal by attorney Marilyn Kamm, under contract with the Office of Public Advocacy. Ms. Kamm has previously requested and received extensions totaling 512 days to file the opening brief. Before this Court is Ms. Kamm's request for an additional 42-day extension of time to file the opening brief.

Under Alaska Appellate Rule 503.5(c), a request for a non-routine extension of time must be accompanied by an affidavit. Under Alaska Court of Appeals Standing Order No. 12, this Court has exempted parties from providing an affidavit if the requested extension falls within certain limits. But if the extension request exceeds those limits, the party's requested extension must be supported by an affidavit containing the information set out in Standing Order No. 12.

Ms. Kamm's current extension request exceeds the applicable limit set out in the Court's schedule of extension limits, but it is not accompanied by the required affidavit. Additionally, given the significant medical issues Ms. Kamm is facing, we are concerned that the motion does not contain a realistic date by which the brief will be filed.

We are sympathetic to Ms. Kamm's situation, and we are not suggesting that Ms. Kamm has been purposefully neglecting her duties to her clients, that she is acting in bad faith, or that she is not hard-working. We understand that she has faced unexpected and serious health problems that are neither her fault nor within in her control. We overlooked the absence of an affidavit from Ms. Kamm's last extension request for these reasons, and we again overlook the absence of an affidavit here.

But when an attorney faces prolonged and serious health problems that prevent the attorney from filing pleadings in a timely manner, this Court must be assured that a plan is in place to protect the interests of that attorney's clients. The absence of a supporting affidavit for the current motion, together with the number of similar motions filed by Ms. Kamm in this and other cases, suggest to us that Ms. Kamm's health problems may be adversely impacting her ability to comply with Alaska Rule of Professional Conduct 1.3: "A lawyer shall act with reasonable diligence and promptness in representing a client."

Accordingly, **IT IS ORDERED:**

1. The motion for an extension of time is **GRANTED** based on the extraordinary circumstances explained in Ms. Kamm's motion. The appellant's opening brief is due on or before **4/1/20**.

2. Any future motions for extension of time must be accompanied by an affidavit as required by Standing Order No. 12.

3. If Ms. Kamm cannot complete the opening brief by the new deadline, she shall consult with the Office of Public Advocacy about the possibility of reassigning this case. Any future motions for extension of time shall include an explanation of the

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steps she has taken to consult with the Office of Public Advocacy about possible relief or the reassignment of this or other cases.

Entered at the direction of the Court.

Clerk of the Appellate Courts

A handwritten signature in cursive script, reading "Beth A. Pechota", is written over a light gray rectangular background.

Beth A. Pechota, Deputy Clerk

cc: Court of Appeals Judges
Central Staff
Brooke Berens - OPA

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